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ABSTRACT

This manual is designed to familiarize mediators with the mediation process and what will occur during a mediation session. Information is provided on the following topics: (1) mediation in special education under the Individuals with Disabilities Education Act and under Section 504 of the Rehabilitation Act of 1973; (2) advantages of mediation; (3) the no-cost requirements of mediation; (4) requesting mediation; (5) agreeing to mediate; (6) appointment of a mediator; (7) the mediation process; (8) qualifications of a mediator); (9) the role of the mediator; (10) the role of parents and the school; (11) the role of legal counsel; (12) preparing for a mediation session; (13) participants in the mediation session; (14) the length of mediation; and (15) the mediation session. The manual discusses impartiality, confidentiality, and suspension of mediation. It also includes sample forms for agreeing to mediation and a booklet on conflict resolution for schools. (CR)

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ED 450 542

CONFLICT RESOLUTION IN SPECIAL EDUCATION & SECTION 504 THROUGH MEDIATION

BUREAU OF INDIAN AFFAIRS BRANCH OF EXCEPTIONAL EDUCATION

MEDIATORS MANUAL [AND] SCHOOL INFORMATION DECEMBER 1999

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EC 308301

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CONFLICT RESOLUTION

IN SPECIAL EDUCATION AND SECTION 504 THROUGH MEDIATION

Bureau of Indian Affairs
Branch of Exceptional Education

MEDIATORS MANUAL

EC 308301

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Overview

Parents and school staff usually agree upon issues regarding evaluation, eligibility, program and placement of students with disabilities. However, there are times when disagreement occurs.

Disagreements and conflict are often inevitable, but they need not produce negative results. If the parent and school are unable to resolve a conflict concerning a student with a disability, then mediation is an available alternative to a long and expensive due process hearing.

Conflict is often inevitable, but it need not produce negative results.

The mediator is a neutral third party and, therefore, has no power to make a decision regarding the dispute. He or she will listen to the views of each party and will assist in developing an acceptable solution to the problem. The mediation is conducted by a qualified and impartial mediator who is trained in effective mediation techniques to handle special education and 504 disputes.

Mediation is completely voluntary. It should not interfere with any procedural safeguards, including a request for a due process hearing.

Mediation is completely voluntary.

This manual will familiarize you with the mediation process and what will occur when you go into a mediation session.

If you have any questions after reviewing these materials, please do not hesitate to contact the school special education director or the Branch of Exceptional Education at 202-208-3559.

Mediation in Special Education and Section 504

Mediation in special education and Section 504 is a process to assist parents and schools in resolving disagreements regarding the education program of a student with disabilities.

A trained mediator works with both parties to guide them toward a mutually satisfactory solution.

A trained mediator works with both parties to guide them toward a mutually satisfactory solution in the best interest of the student. This occurs at a non-adversative meeting which is more structured than a parent-school conference, but less formal than a due process hearing.

Mediation is a **voluntary** process. It is **optional** for both parties. The mediation session is completely confidential and encourages open communication.

Advantages of Mediation

The purpose of mediation is to provide an **optional alternative** to a due process hearing and provide a means to resolve disagreements between parents and school personnel. In virtually all cases, mediation is less costly and adversative than a due process hearing and is completely voluntary for both parties.

Mediation helps both parties let go of the past and focus on what is best for the student in the future.

Mediation can:

- Identify disagreements concerning the identification, evaluation, or educational placement of a student;
- Clarify the issues causing the disagreement;
- Provide those involved with uninterrupted opportunities to present their points of view;
- Stimulate mutual problem-solving efforts;
- Promote positive working relationships between parents and school personnel; and
- Help parents and school personnel focus on what they have in common — the student — rather than on the issues which divide them.

Mediation helps both parties let go of the past and focus on what is best for the student in the future.

The Cost of Special Education and Section 504 Mediation

Mediation can take place at no cost to the parents. The Branch of Exceptional Education and/or school bear the costs related to mediation. Section 504 mediation will be a school expense. However, parties who choose to involve their attorneys are responsible for their own attorney fees. Any incidental costs are the school's responsibility.

The ultimate responsibility for the administration of the mediation process is with the Branch of Exceptional Education. The Branch of Exceptional Education will ensure that mediators throughout the Bureau system are trained and receive appropriate follow-up training.

Requesting Mediation

A request for mediation may occur when parents and schools reach an impasse after having made good faith efforts to resolve their differences. A request for mediation will most likely occur when parties are unable to modify their positions without outside assistance. Mediation can be requested by the parents or school.

Mediation can be requested by the parents or school.

Mediation may occur on any issue considered appropriate for a due process hearing or complaint investigation. Mediation may occur prior to or concurrent with a request for a due process hearing or filing a complaint. However, it may not, **in any way**, be used to deny or delay a parent's right to a due process hearing. Mediation is not a necessary step prior to a due process hearing. It is an optional alternative.

Agreeing to Mediate

Mediation is voluntary for both parties. Unless both parties agree to mediation as a way to resolve their disagreement, a mediation session cannot be scheduled. Once the parents and school agree to mediation, the parent completes the agreement to mediate form (page 13). The school completes the mediation agreement request form (page 14) and sends to the Branch of Exceptional Education.

Appointment of a Mediator

The Branch of Exceptional Education maintains a list of trained mediators. The Branch of Exceptional Education appoints a mediator from that list who carries out all of the mediation activities.

The Mediation Process

Once appointed, the mediator will set the date, time, and location for the session, and determine who will participate in the session. At that time, the mediator will answer any questions about the process and may request additional information from both parties.

Mediators

Individuals selected to serve as mediators have successfully completed a training program in mediation with additional training in special education and Section 504 issues. In addition to the initial training, mediators will participate in regularly scheduled inservice sessions to ensure updating of appropriate information and skills.

Mediators are selected on the basis of these qualifications:

- neutrality, both real and perceived;
- knowledge of special education and Section 504 and the needs of students;
- knowledge of the process of mediation; and
- appropriate personal communication skills.
- may not be an employee of the Bureau of Indian Affairs or any educational agency that is providing direct services to a child who is the subject of the mediation process.
- must not have a personal or professional conflict of interest.

The Role of the Mediator

The mediator is a **neutral** third party acting as a **facilitator** to assist parents and school personnel in reaching an agreement.

Although the mediator is **in control** of the session, he/she does not make the decision on how to resolve the issue(s). The mediator allows parties to present their positions and attempts to achieve mutual understanding and a solution to the problem in the best interests of the student.

The mediator **facilitates** the process. He or she summarizes positions and helps the parties consider possible alternatives.

The mediator allows parties to present their positions and attempts to achieve mutual understanding and a solution to the problem in the best interests of the student.

The Role of Parents and the School

The parties are expected to approach the mediation in good faith and with the intention of reaching an agreement. They will be active participants in the session and, if mediation is successful, will develop an agreement with the assistance of the mediator.

The Role of Legal Counsel

The parties understand that mediation is not a substitute for independent legal advice. The parties may secure independent legal advice throughout the mediation process. The parties are responsible for their own legal fees.

Preparing for a Mediation Session

- Make no other plans for the day or evening of the mediation.
- Put aside personality conflicts and focus on the student's best interest.
- Review all relevant documents, papers, and reports prior to the session.
- Organize your information and any materials before the mediation session.
- Think of possible alternatives/ways of solving the problem.
- Think about what you want to get out of the session.
- Think about what you want the other party to do.
- Think about what you are willing to do.
- Be willing to listen and compromise.

Participants in the Mediation Session

The number of participants at each mediation session will be kept to an absolute minimum in order to enhance the potential for effective problem solving.

At the session, the parties to the dispute—the parent(s) and the school 's representative(s)—must have the authority to make decisions and to commit any resources agreed upon as the result of the mediation.

The mediator makes the final decision on who will attend the mediation session.

The Length of Mediation

Mediation sessions could take up to a full day. Generally, however, sessions can be completed in three to four hours, depending upon the complexity of the issue(s). It is recommended that participants plan to set aside a full day, even though the session is likely to conclude in a shorter period of time.

The Mediation Session

The mediation session consists of several phases:

Introduction The mediator begins the session promptly and explains the mediation process and the ground rules of the session to all participants.

Joint Session Both parties to the dispute are given an opportunity **without interruption** to present the issue(s) from their point of view. Only the mediator may ask questions or summarize what has been said.

Caucus The mediator may use the caucus which is an opportunity for each party to meet privately with the mediator to further clarify issues and positions. The mediator will not share information from the caucus without your consent.

Agreement When the parties reach an agreement, the mediator assists in explaining solutions to the problem. The parties determine the terms of the agreement and the mediator puts the agreement in writing. The mediation agreement is signed by both parties and the mediator. At the conclusion of the session, each party receives a copy. If a mediation session results in an agreement which would require changes to a student's IEP, an IEP committee should be convened as soon as possible to consider the incorporation of elements of the agreement into the student's IEP.

Not all mediation sessions result in agreements. If an agreement is not reached, the mediator will certify to the parties and the Branch of Exceptional Education, in writing, that the mediation has been unsuccessful.

The discussion during the mediation session is completely **confidential** and there will be **no disclosure of any information given by either party.** At the conclusion of the session, and in the presence of the parties, the mediator may destroy any notes he/she has taken during the session. The only part of the mediation session that may be shared with other persons is the written agreement.

The discussion during the mediation session is completely confidential, and there will be no disclosure of any information given by either party.

The mediator will be excluded from participation in subsequent proceedings—staffings, complaint investigations, and due process hearings. Nothing occurring at a mediation session is admissible as evidence in a due process hearing. The written agreement may be admissible in subsequent proceedings.

No electronic recording of mediation sessions will be allowed, and no records of the proceedings will be kept other than written agreements in successful mediations.

Conclusion

The purpose of mediation in special education and Section 504 is to provide an alternative to a due process hearing or complaint procedure investigation as a way to resolve conflicts, clarify issues and stimulate mutual problem-solving efforts between parents and school personnel. Even if an agreement is not reached, there is the potential of both parties leaving the session with an enhanced perspective of the issues and with the focus on the student. Most mediations result in better communication between the school and parents. This leads to an improved situation for the student.

Bureau of Indian Affairs

Branch of Exceptional Education

Disclosure and Standards of Mediation

Mediation is a conflict resolution process in which an impartial third party facilitates participants negotiating a voluntary agreement. In mediation, decision-making authority rests at all times with the parties. These standards are intended to assist and guide special education and Section 504 mediation in school throughout the Bureau of Indian Affairs.

Mediators have duties to the parties, to their profession, and to themselves. They should be honest and unbiased, act in good faith, be diligent, and never seek to advance their own interests at the expense of the parties.

Mediators must act fairly in dealing with mediation participants, have no personal interest in the terms of any settlement agreement, have no bias toward any individual or institution involved in mediation, be reasonably available as requested by mediating parties, and be certain that the parties are informed about the mediation process in which they are involved.

Impartiality

The mediator must maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by work or by action, and a commitment to serve all mediation participants as opposed to a single party. The mediator should disclose to the participants any affiliations which the mediator may have with any participant and obtain all parties/consent to proceed as mediator.

Informed Consent

Each party's consent to proceed with mediation should be obtained early, prior to the beginning of substantive negotiations.

Confidentiality

Maintaining confidentiality is critical to the integrity of the mediation process. Confidentiality encourages candor, a full exploration of the issues, and the possibilities of settlement. The mediator should resist testifying, and disclosing other information about the substance of a mediation at any proceeding without the consent of all mediating parties.

Suspension or Termination of Mediation

The mediator shall inform the participants of their rights to withdraw from mediation at any time and for any reason, except as is required by law. If the parties reach a final impasse, the mediator should not prolong unproductive discussions which result in emotional and monetary costs to the participants.

Comparison to other Processes

The mediator shall explain that mediation is not arbitration, legal representation, or therapy, and that the mediator will not decide any issues for the parties.

Independent Advice and Information

The parties understand that mediation is an agreement-reaching process in which the mediator assists parties to reach agreement in a collaborative and informed manner. It is understood that the mediator has no power to decide disputed issues for the parties. The parties understand that mediation is not a substitute for independent legal advice. The parties are encouraged to secure such advice throughout the mediation process and are strongly advised to obtain independent legal review of any formal mediated agreement before signing that agreement. The parties understand that the mediator has an obligation to work on behalf of all parties and that the mediator cannot render individual legal advice to any party and will not render therapy or arbitrate within the mediation.

Opportunity for Full Expression of Interests

The mediator shall seek to provide each mediation participant with a full opportunity to effectively express his or her interests.

A mediator shall participate in continuing training provided by the Branch of Exceptional Education. A mediator is encouraged to join with other mediators and members of related professions to promote mutual professional development.

Sample Forms

Parent Agreement to Mediate

I, _____

have read and understood the written materials describing mediation services and have been fully informed that the mediator is not providing the parent(s), the school, or the child with legal representation. I also understand that the mediator is not providing counseling or therapy services.

I am choosing to pursue mediation to try to reach an agreement on some or all of the issues regarding my child's educational program. I understand that the mediation process will involve the mediator speaking privately to the parent(s) and the school representative(s). I understand that the mediator(s), acting as a neutral third party, will work with each of us to develop an agreement that is mutually satisfactory.

If an agreement is reached, I understand that the signed agreement will be shared with other individuals working with my child. I understand that discussions during the mediation session will be confidential and will not be used during subsequent proceedings. I, therefore, agree not to call the mediator(s) as a witness in any future proceedings pertaining to the child's case.

The following is a summary of the issue(s) I would like discussed at the mediation with the school: _____

_____

_____

_____

_____

_____

_____

I have received a copy of my parental rights in special education or parent rights under Section 504.

Parents _____

Address _____

Telephone # _____ Child's name _____ DOB _____

School _____ Agency _____

Parent(s) signature(s) _____ Date _____

—Send to School —

School Agreement to Mediate and Request for Mediation

I,_____representing_____ school, request mediation in the matter of _____(student's initials) to try to reach an agreement on some or all of the issues regarding educational services for the student. I understand that the mediation process will involve the mediator speaking privately to the parent(s) and the school representative(s). I understand the mediator, acting as a neutral third party, will work with each of the parties to develop an agreement that is mutually satisfactory.

If an agreement is reached, I understand that the signed agreement will be shared with other individuals working with the student. I understand that discussions during the mediation session will be confidential and will not be used during subsequent proceedings. I, therefore, agree not to call the mediator as a witness in any future proceedings pertaining the student's case.

The following is a summary of the issue(s) I would like discussed at the mediation with_____(name of parents):_____

_____

_____

_____

_____

_____

_____

_____

A copy of the parents' agreement to mediate is attached to this request. The parent(s) have received a copy of the brochure "Parental Rights in Special Education" and have been informed of their right to a due process hearing.

School representative _____

Parents _____

Address _____

Telephone# _____ Student _____ DOB _____

School _____ Agency _____

Representative signature _____ Date _____

—Send to Branch of Exceptional Education—

Mediation Agreement

Mediation number_____

STUDENT _____ Initials _____ DOB _____

Date of mediation _____

Place of mediation _____

School _____ Agency _____

MEDIATION ISSUE(S) _____

_____

_____

_____

PARTIES—Each of you understands the preference for a limited number of participants at the meeting. At this time, the only participants who will be allowed into the session, without prior consent, will be:

Parent/Guardian _____

School representative _____

Other participants (please include relationship to student)

_____

_____

_____

TERMS OF AGREEMENT (use additional pages if necessary)—The parties understand that mediation is an agreement-reaching process in which the mediator assists parties to reach agreement in a collaborative and informed manner. It is understood that the mediator has no power to decide disputed issues for the parties. The parties understand that mediation is not a substitute for independent legal advice. The parties may secure such advice throughout the mediation process. The parties understand that the mediator has an obligation to work on behalf of all parties and that the mediator cannot render individual legal advice to any party and will not render therapy or arbitrate within the mediation.

_____

_____

_____

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Mediation Agreement (continued)

Neither the mediator nor the mediator's records or notes will be available for further procedures such as a due process hearing. Any agreement reached will be reduced to writing and duplicate originals given to the parents and the school.

Each of you should be aware that the length of the mediation is unknown. Since we are starting at _____, please reserve the remainder of the day for the conference.

The parties should understand that as mediator, my duty is to help the parents and the school reach an agreement on the future placement and educational program for this student. While it is important and useful to review the past activities of the parties, with respect to the placement and educational program of this student, the parties are urged to be particularly prepared to address the student's future placement and program.

SIGNATURES:

Parent/guardian _____ Date _____

School representative _____ Date _____

Mediator _____ Date _____

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Letter to Attorney

Dear_____,

As I believe you know, I will be working with _____ and_____ as mediator. My understanding is that you will be serving as _____'s individual legal counsel. I look forward to your assistance and to working cooperatively with you. As _____'s individual counsel, I will be counting on you for the following:

- To be sure that all issues _____would like considered in the mediation are addressed;
- To ensure that _____ is acting with full desired information and documentation;
- To ensure that _____ receives all desired individual legal advice and information; and
- To suggest specific settlement options on disputed issues.

I want to encourage you to meet with _____ early in the mediation process, when we develop a first comprehensive draft mediated agreement, and, of course, prior to signing any final settlement.

Thank you for your time and cooperation. Please call me with any questions, concerns or suggestions you have.

Sincerely,

cc: Clients

Parent Evaluation Form

The purpose of this survey is to *improve* mediation service. Information is maintained in a confidential manner.

1. Parent _____
   Address _____ Telephone _____

2. Summary of issue mediated _____
   _____

3. How did you find out about mediation? _____
   _____

4. What made you decide to try mediation? _____
   _____

5. Was the mediation successful? Yes _____ No_____

6. What was the most positive aspect of the session? _____
   _____
   The most negative?_____

7. How would you have improved the session? _____
   _____

8. How would you rate the mediator? Good _____ Average _____ Outstanding ____

9. Did you reach an agreement at the session? Yes _____ No _____
   If so, how helpful was the mediator in assisting you in reaching the agreement? _____
   _____

10. Did you consult any attorney before, during, or after the mediation process?
    Yes _____ No _____

11. Do you feel that the mediator sufficiently explained the mediation process?
    Yes _____ No _____

12. Had you requested a due process hearing prior to the mediation session?
    Yes _____ No _____ If so, is the hearing still scheduled?_____

13. Do you feel the mediation process has improved communication with the school?
    Yes _____ No _____

14. Would you recommend the process to other individuals involved in special education disputes? Yes_____ No _____

Thank you for completing this form. Please mail to:

Bureau of Indian Affairs
Branch of Exceptional Education
MS 3512 MIB Code 523
1849 C Street NW
Washington DC 20240

School Evaluation Form

The purpose of this survey is to *improve* mediation service. Information is maintained in a confidential manner.

1. Parent _____
   Address _____ Telephone _____

2. Summary of issue mediated _____

   _____

3. How did you find out about mediation? _____

   _____

4. What made you decide to try mediation? _____

   _____

5. Was the mediation successful? Yes _____ No_____

6. What was the most positive aspect of the session? _____

   _____

   The most negative? _____

7. How would you have improved the session? _____

   _____

8. How would you rate the mediator? Good _____ Average _____ Outstanding ___

9. Did you reach an agreement at the session? Yes _____ No _____

   If so, how helpful was the mediator in assisting you in reaching the agreement? ____

   _____

10. Did you consult any attorney before, during, or after the mediation process?

    Yes _____ No _____

11. Do you feel that the mediator sufficiently explained the mediation process?

    Yes _____ No _____

12. Had the school requested a due process hearing prior to the mediation session?

    Yes _____ No _____ If so, is the hearing still scheduled?_____

13. Do you feel the mediation process has improved communication with the parents?

    Yes _____ No _____

14. Would you recommend the process to other schools involved in special education disputes? Yes_____ No_____

Thank you for completing this form. Please mail to:

Bureau of Indian Affairs
Branch of Exceptional Education
MS 3512 MIB Code 523
1849 C Street NW
Washington DC 20240

Evaluation Form -Mediator

The purpose of this survey is to *improve* mediation service. Information is maintained in a confidential manner.

1. Name _____ Telephone _____

   Address _____

2. Summary of issue mediated _____

   _____

3. How would you rate the success of the session?

   Unsuccessful _____ Successful _____ Very Successful _____

4. What was the most positive aspect of the session? _____

   _____

   The most negative? _____

   _____

5. How would you have improved the session? _____

   _____

6. How much time did you spend preparing for the session? _____

   _____

7. What was the most difficult aspect of conducting the session? _____

   _____

8. Would you be willing to facilitate other mediation sessions? Yes _____ No _____

9. If an agreement was not reached, what do you perceive was the major obstacle to resolving the dispute? _____

   _____

10. In your opinion, would mediation have been more helpful to the parties at some other stage of the dispute? Please explain. _____

    _____

11. What types of follow-up inservice training would be helpful to you as a mediator? ___

    _____

    _____

PLEASE ATTACH A COPY OF THE AGREEMENT THAT WAS REACHED.

Thank you for completing this form. Please mail to:

Bureau of Indian Affairs
Branch of Exceptional Education
MS 3512 MIB Code 523
1849 C Street NW
Washington DC 20240

For further information on the special education mediation process call:

Your school's
special education director
or the
Branch of Exceptional Education
202-208-5037
Office of Indian Education
1849 C Street NW
MS 3512 MIB Code 523
Washington DC 20240-0001
or
Education for Parents of Indian Children
with Special Needs (EPICs) Project
P.O. Box 788
Bernalillo, NM 87004
505-867-3396
Fax: 505-867-3398

This document was developed by John Copenhaver from the Mountain Plains Regional Resource Center, affiliated with the Center for Persons with Disabilities, Utah State University, Logan, Utah. A special thanks to Jim Melamed from Eugene, Oregon, for selected materials and input.

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CONFLICT RESOLUTION

IN SPECIAL EDUCATION
AND SECTION 504
THROUGH MEDIATION

Bureau of Indian Affairs
Branch of Exceptional Education

SCHOOL INFORMATION

December 1999

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Introduction

Disagreements and conflict is often inevitable, but it need not produce negative results. If the parent and school are unable to resolve a conflict concerning a student with a disability, then mediation is an alternative to a long and expensive due process hearing.

The mediator is a neutral individual and, therefore, has no power to make a decision regarding the dispute. He or she will listen to the views of each party and will assist in developing an acceptable solution to the problem.The mediation is conducted by a qualified and impartial mediator who is trained in effective mediation techniques to handle special education and 504 disputes.

Mediation is completely voluntary. It should not interfere with any procedural safeguards, including a request for a due process hearing.

This manual will familiarize you with the mediation process and what will occur when you go into a mediation session.

If you have any questions after reviewing these materials, please do not hesitate to contact your school special education or Section 504 administrator, or the Branch of Exceptional Education at 202-208-5037.

Mediation in Special Education

Mediation in special education and Section 504 is a process to assist parents and schools in resolving disagreements regarding a student's special education program.

A trained mediator works with both parties to guide them toward a mutually satisfactory solution in the best interest of the student. This occurs at a non-adversative meeting

which is more structured than a parent-school conference, but less formal than a due process hearing. Mediation is a **voluntary** process. It is **optional** for both parties. The mediation session is completely confidential and encourages open communication.

Advantages of Mediation

The purpose of mediation is to provide an **optional alternative** to a due process hearing and provide a means to resolve disagreements between parents and school personnel. In virtually all cases, mediation is less costly and adversative than a due process hearing and is completely voluntary for both parties.

Mediation helps both parties let go of the past and focus on what is best for the student in the future.

Mediation can:

- Identify disagreements concerning the identification, evaluation, or educational placement of a student;
- Clarify the issues causing the disagreement;
- Provide those involved with uninterrupted opportunities to present their points of view;
- Stimulate mutual problem-solving efforts;
- Promote positive working relationships between parents and school personnel; and
- Help parents and school personnel focus on what they have in common — the student — rather than on the issues which divide them.

The Cost of Special Education Mediation

Special education or Section 504 mediation can take place at no cost to the parents. The Branch of Exceptional Education and/or school pays the cost of mediation. Schools can access the mediation services for Section 504 disputes, but will be responsible for mediation costs. However, parties who choose to involve their attorneys are responsible for their own attorney fees. Any incidental costs are the school's responsibility.

The ultimate responsibility for the administration of the special education mediation process is with the Branch of Exceptional Education in Washington D.C. The office will ensure that all mediators throughout are trained and receive appropriate follow-up training.

Requesting Mediation

A request for mediation may occur when parents and schools reach an impasse after having made good faith efforts to resolve their differences. Mediation can be requested by the parents or school. Both parties must agree to mediation.

A request for mediation will most likely occur when parties are unable or unwilling to modify their positions without outside assistance.

Mediation may occur on any issue considered appropriate for a due process hearing. Mediation may occur prior to or concurrent with a request for a due process hearing or filing a complaint. However, it may not, **In any way**,be used to deny or delay a parent's right to a due process hearing. Mediation is not a necessary step prior to a due process hearing. It is an optional alternative.

Appointment of a Mediator

The Branch of Exceptional Education maintains a list of trained mediators. The Branch appoints a mediator from that list to carry out all mediation activities.

Agreeing to Mediate

Mediation is voluntary for both parties. Unless both parties agree to attempt mediation as a way to resolve their disagreement, a mediation session cannot be scheduled.

The Mediation Process

Once a request for mediation is received by the Branch, the department appoints a trained mediator. The mediator should not be a member of the school community or associated in any manner to either party.

The mediator will set the date, time and location for the session and determine who will participate in the session. At that time, the mediator will answer any questions about the process and may request additional information from the parties.

Mediators

Individuals selected to serve as mediators have successfully completed a training program specifically designed for special education mediators. In addition to the initial training, mediators will participate in regularly scheduled inservice sessions to assure updating of appropriate information and skills.

Mediators are selected on the basis of these qualifications:

- neutrality, both real and perceived;
- knowledge of special education and the needs of students;
- knowledge of the process of mediation; and
- appropriate personal communication skills.

The Role of the Mediator

The mediator is a **neutral** third party acting as a **facilitator** to assist parents and school personnel in reaching an agreement.

Although the mediator is **in control** of the session, he/she does not make the decision on how to resolve the issue(s). The mediator allows parties to present their positions and attempts to achieve mutual understanding and a solution to the problem in the best interests of the student. The mediator **facilitates** the process. He or she summarizes positions and helps the parties consider possible alternatives.

The Role of Parents and the School

The parties are expected to approach the mediation in good faith and with the intention of reaching an agreement. They will be active participants in the session and, if mediation is successful, will develop an agreement with the assistance of the mediator.

Preparing for a Mediation Session

- Put aside personality conflicts and focus on the student's best interest.

- Make no other plans for the day or evening of the mediation.
- Review all relevant documents, papers, and reports prior to the session.
- Organize your information and any materials before the mediation session.
- Think of possible alternatives/ways of solving the problem.
- Think about what you want to get out of the session.
- Think about what you want the other party to do.
- Think about what you are willing to do.
- Be willing to listen and compromise.

Participants in the Mediation Session

The number of participants at each mediation session will be kept to an absolute minimum in order to enhance the potential for effective problem solving.

At the session, the parties to the dispute—the parent(s) and the school's representative(s)—must have the authority to make decisions and to commit any resources agreed upon as the result of the mediation.

The mediator makes the final decision on who will attend the mediation session.

The Length of Mediation

Mediation sessions could take up to a full day. Generally, however, sessions can be completed in three to four hours, depending upon the complexity of the issue(s). It is recommended that participants plan to set aside a full day, even though the session is likely to conclude in a shorter period of time.

The Mediation Session

The mediation session consists of several phases:

Introduction. The mediator begins the session promptly and explains the mediation process and the ground rules of the session to all participants.

Joint Session. Both parties to the dispute are given an opportunity **without interruption** to present the issue(s) from their point of view. Only the mediator may ask questions or summarize what has been said.

Caucus. The mediator may use the caucus, which is an opportunity for each party to meet privately with the mediator to further clarify issues and positions. The mediator will not share information from the caucus without your consent.

Agreement. When the parties reach an agreement, the mediator assists in explaining solutions to the problem. The parties determine the terms of the agreement and the mediator puts the agreement in writing. The mediation agreement is signed by both parties and the mediator. At the conclusion of the session, each party receives a copy. If a mediation session results in an agreement which would require changes to a student's IEP, an IEP team should be

convened as soon as possible to consider the incorporation of elements of the agreement into the stu-dent's IEP.

Not all mediation sessions result in agreements. If agreement is not reached, the mediator will certify to the parties and Branch of Exceptional Education in writing, that the mediation has been unsuccessful.

The discussion during the mediation session is completely **confidential,** and there will be **no disclosure of any information given by either party.** At the conclusion of the session, and in the presence of the parties, the mediator may destroy any notes he/she has taken during the session. The only part of the mediation session that may be shared with other persons is the written agreement.

The mediator will be excluded from participation in subsequent proceedings — staffings, complaint investigations, and due process hearings. Nothing occurring at a mediation session is admissible as evidence in a due process hearing. The written agreement may be admissible in subsequent proceedings.

No recording of mediation sessions will be allowed and no records of the proceedings will be kept other than written agreements in successful mediations.

Conclusion

The purpose of mediation in special education and Section 504 are to provide an alternative to a due process hearing or complaint procedure investigation as a way to resolve conflicts, clarify issues and stimulate mutual problem-solving efforts between parents and school personnel. Even if an agreement is not reached, there is the potential of both

parties leaving the session with an enhanced perspective of the issues and with the focus on the student. Most mediations result in better communication between the school and parents. This leads to an improved situation for the student.

For further information on the special education mediation process call:
Your school's
special education director
or the
Branch of Exceptional Education
202-208-5037
Office of Indian Education
1849 C Street NW
MS 3512 MIB Code 523
Washington DC 20240-0001
or
Education for Parents of Indian Children
with Special Needs (EPIC) Project
P.O. Box 788
Bernalillo, NM 87004
505-867-3396
Fax: 505-867-3398

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